IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

OP.No. 23777 of 1999(E)

PETITIONER:

K.M.HAMEED,
S/O.ANDUNNI,
K.K.PURAM,
MOGRAL POST,
KASARAGOD DIST.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:
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1. THE EXCISE COMMISSIONER,
TRIVANDRUM.

2. THE ADDITIONAL EXCISE COMMISSIONER,
TRIVANDRUM.

3. THE ASSISTANT EXCISE COMMISSIONER,
KASARAGOD.

BY GOVERNMENT PLEADER SMT.R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON 12/03/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.39681/1999 IN O.P. NO.23777/1999

DISMISSED:

12.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE AGREEMENT EXECUTED BY C.A.IBRAHIM IN FAVOUR OF THE PETITIONER, HIS FATHER AND TWO BROTHERS JOINTLY DT.25.6.1996.

P2: TRUE COPY OF FIR OF CRIME NO.19/97 OF THE KASARAGOD POLICE STATION.

P3: TRUE COPY O;F THE JUDGMENT OF THIS HON'BLE COURT DT.25.3.97 IN O.P. NO.4280/97.

P4: TRUE COPY OF THE STATEMENT FILED BY PETITIONER BEFORE THE ASSISTANT EXCISE COMMISSIONER IN THE CONFISCATION PROCEEDINGS.

P5: TRUE COPY OF THE PROCEEDINGS OF THE ASSISTANT EXCISE COMMISSIONER DT.4.12.98.

P6: TRUE COPY OF ORDER OF THE ADDITOINAL EXCISE COMMISSIONER, TRIVANDRUM DT.5.5.99.

P7: TRUE COPY OF REVISION PETITION FILED BY PETITIONER BEFORE R1.

P8: TRUE COPY OF ORDER OF R1 DT.1.9.99.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.23777 of 1999

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Dated this the 12th day of March, 2007.

JUDGMENT

The petitioner is challenging the order of confiscation issued under Section 67(B) of the Abkari Act confiscating vehicle bearing registration No.KCF 4653 which is involved in abkari offence of transporting 146.88 litres of Indian made foreign liquor. Even though petitioner's case is that vehicle was purchased by him along with others and was entrusted in the workshop for repair on 16.12.1996 and the driver without any authority took the vehicle on the same night for committing the offence, it is seen that petitioner has launched complaint to the police for theft of the vehicle only on 27.12.1996. On facts, all the three authorities have found against the petitioner. I am unable to accept petitioner's argument that he entrusted the vehicle with the workshop because if petitioner had entrusted the vehicle for repairs, then workshop would not have allowed the driver of the vehicle to take the same in the same night without petitioner's concurrence. Moreover, petitioner has not explained as to what is the nature of defect for which long repair was required for the vehicle because petitioner himself enquired about the vehicle only on 27.12.1996. In the circumstances, I do not find

any ground to interfere with the concurrent finding of fact by three authorities. However, since the vehicle was released to the petitioner and is in his use for the last 8 years, I direct the respondents to treat the confiscation as notional, encash the Bank Guarantee of Rs.51,000/- and collect the same as value of vehicle. The petitioner can continue to own and use the vehicle after respondents encash the Bank Guarantee and collect the value of the vehicle as above.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms